

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION FREE CONFERENCE COMMITTEE ON SENATE BILL 242

Call to Order: By **CHAIRMAN KEN MILLER**, on April 18, 2001 at 8:00 A.M., in Room 350 Capitol.

ROLL CALL

Members Present:

Sen. Ken Miller, Chairman (R)
Rep. Dick Haines, Vice Chairman (R)
Rep. Sylvia Bookout-Reinicke (R)
Sen. Jerry O'Neil (R)
Sen. Ken Toole (D)
Rep. Joe Tropila (D)

Members Excused: None.

Members Absent: None.

Staff Present: David Niss, Legislative Branch
Mary Vandebosch, Legislative Branch
Mary Gay Wells, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Executive Action: SB 242 Amended

{Tape : 1; Side : A; Approx. Time Counter : 0}

HEARING ON SB 242

Comments and Questions from Committee Members and Responses:

CHAIRMAN KEN MILLER opened the meeting. He explained that **David Niss** took over at the last minute to put the amendments. He had worked with **Mary Vandebosch**. **CHAIRMAN MILLER** asked **Mr. Niss** to

give an overview of what the bill now accomplished with the new amendments **EXHIBIT(frs87sb0242a01)**.

Mr. Niss said the biggest change was that after the effective date of this bill, there will be no more municipal jurisdiction over areas unless an area created prior to the effective date of the bill is submitted to the record property holders within that area for a vote and is approved by those voters. After the effective date of the bill, the only jurisdictional area that can be created is the county jurisdictional area as defined on page 2, lines 2-5 with the currently stricken language re-inserted. The amendments would put to sleep the municipal jurisdictional areas unless they are submitted for vote to the record property holders within that existing municipal jurisdictional area and the voters approve of the continuation of that municipal jurisdictional area. After the effective date of the bill, the only jurisdictional areas for the purposes of the enforcement of building codes that can be created is the county jurisdictional area as defined on page 2, lines 2-5 with the stricken language re-inserted.

Those changes are contained in the amendments starting on page 3. New sections 4 through 7 contain the changes in amendment #12. The procedure that is required for the creation of the new county jurisdictional areas as defined is first adoption by the Board of County Commissioners and second submission to the Dept. of Commerce for its approval of the code enforcement program under current statutes and standards, both in statute and rules. Those standards are in 50-60-302. After approval by the Dept. the Commissioners have to file a copy of the approved program and a map showing the county jurisdictional area with the county clerk and recorder. After that, it is submitted to the record property owners to vote for approval within that county jurisdictional area. If the voters approve, it becomes effective 60 days after certification of the result of the election. That language and the effective date was maintained from SB 242.

There was a second way that one of the new county jurisdictional areas could be created and that was by petition of the property owners within the proposed area. The second method of creating the new county jurisdictional area is contained in new section 6 at the top of page 4. In that section all the steps that have to be followed by the petitioners is not for a local referendum. It is for the direct creation of the jurisdictional area.

REP. SYLVIA BOOKOUT-REINICKE asked if the county commissioners could start a petition.

CHAIRMAN MILLER said that there was nothing in the bill that would limit them from doing so.

Mr. Niss agreed that nothing was in the bill that would say they can't. If that were the wish of the committee, he would be more comfortable with a specific provision for that.

There were two points in new section 6. The petition has to be submitted to the Dept. and approved under existing standards in 50-60-302 and Dept. administrative rules. Subsection 3 (a) states the number of valid signatures required for the creation or extension of the county jurisdictional area is at least 51% of the record owners of real property located within the proposed area. The jurisdictional area becomes effective 60 days after the determination by the county election administrator that the required number of signatures are on the petition.

All of that law in sections 4 through 6 will be codified in the statutes. Section 7 is going to be uncoded law which is truly the death knell of the existing municipal jurisdictional areas. It is that section that requires that the continuation of the municipal jurisdictional areas be subject to mail ballot election. If not approved then that existing municipal jurisdictional area is put to sleep under section 7.

Subsections 5 (a), (b) and (c) on page 5, spells out clearly what the effect of the termination of the existing municipal jurisdictional areas is. Building permits issued by a municipality pursuant to the creation of an area before termination of the area are valid and enforceable. No more building permits can be issued after the termination. A municipality may not request and the Dept may not approve the creation of any new municipal jurisdictional areas. That affect of the termination is also reflected in the current bill on page 2, lines 23-30 and on page 3, lines 1-7. That section, subsection (5) will take further adjustment because municipal jurisdictional areas can continue to exist; they just can't continue to exist outside of the city limits.

In section 8 on page 5, out of an abundance of caution, an exception from the local mandate statutes was inserted because there is no way to know whether an election, that is required for the continuation of an existing municipal jurisdictional area outside city limits, will force the county to incur direct cost over and above the 1/10 of a mill standard.

SEN. JERRY O'NEIL wanted to add that county commissioners could start a petition on their own.

REP. BOOKOUT-REINICKE felt that on page 3, Section 4 (2) it should read "majority of the ballots returned." There may be property owners in California and they might not even bother with that kind of mail.

SEN. KEN TOOLE said it was also addressed on page 5 subsection (4).

CHAIRMAN MILLER asked if the committee would be in agreement over a simple majority being the number of returned ballots. It was agreed upon by a vote of 5-1 with **REP. TROPILA** voting no.

REP. BOOKOUT-REINICKE asked for some language to allow county commissioners to start a petition. She also asked that the cities be able to create new areas but would have to be within the city limits.

REP. JOE TROPILA asked about the effective date and was it retroactive. **Mr. Niss** said that he had amended the retroactive ability section that is currently in the bill on page 5, section 5, line 15 and made that retroactive applicability section apply only to the existing municipal jurisdictional areas outside the city limits.

REP. TROPILA asked if farms and ranches were exempt. **CHAIRMAN MILLER** answered they are not exempt. If the county commissioners want to include farm buildings, that could be part of the plan. If they want to exempt farm buildings, that could be part of the plan. The bill does not specify that they are exempt.

REP. TROPILA stated that city jurisdiction would end at the city limits. He then asked for **Alec Hansen, MT League of Cities/Towns** to comment and **Jim Brown, Dept. of Commerce** to comment.

Alec Hansen said seven or eight cities have extraterritorial jurisdiction. Special elections can be very expensive. It was good that **Mr. Niss** put in the section on mandates to protect the counties.

Jim Brown agreed with **Mr. Hansen**. It appeared that the extended municipal jurisdiction will be over and the only way those areas could continue to be covered would be if the county chose to have a partial or entire county jurisdictional area.

Mr. Niss said under the provisions of the bill, assuming an election had taken place, etc. the county could wind up with exactly the same jurisdictional area both in terms of the codes itself and the geographic boundaries.

CHAIRMAN MILLER stated that there were several options. The county could put in their own code enforcement division. They could contract with the city to do exactly what they are doing already. The people have to make those decisions. He did not believe elections were an unfunded mandate. They do not have to do anything. They have to take it to a vote of the people if they want to continue to have this code enforcement done through the city. Mail ballot is much cheaper than a regular election.

SEN. TOOLE offered a standard savings clause amendment **EXHIBIT (frs87sb0242a02) SB024210.amv**. He knew that statute trumps rules. He was concerned about the other amendments.

Mr. Niss said **SEN. TOOLE'S** amendment was incompatible with Section 7. So, it would be one or the other. It says "proceedings that were begun before the effective date of this act." That could include for example a request by a city to the Dept. to extend its jurisdictional area which Section 7 says, "unless it is approved and in effect before the effective date of the act," it is put to sleep.

REP. BOOKOUT-REINICKE stated she could not support his amendment because it would harm a certain family outside of Missoula.

SEN. TOOLE felt it unwise to plan a bill around a certain family.

REP. BOOKOUT-REINICKE replied that it wasn't only about one family. During their hearing, busloads of people came in support. Many people want to be able to vote on what happens to them.

SEN. O'NEIL asked about those counties that already have county-wide jurisdiction. Will those counties remain under this bill.

Mr. Niss replied the bill would not affect whatsoever an existing county jurisdiction. Section 7 requires an election.

SEN. O'NEIL asked if under the existing language, would it be possible for the counties to take over the jurisdictional areas by petition rather than by election.

CHAIRMAN MILLER said that was the intent of the bill.

SEN. TOOLE felt the counties would not have the money to do elections or petitions. Both take time and money.

REP. HAINES commented that one of the reasons the cities are pushing so hard against this bill was the cash flow that comes with their jurisdictional authority.

Motion: REP. BOOKOUT-REINICKE MOVED THE AMENDMENTS (EXHIBIT 1) with the conceptual amendments agreed upon BE ADOPTED.

Discussion:

Mr. Niss read the conceptual amendments. There were four. One would allow the county commissioners to petition. Two would make sure that the bill does not affect municipal jurisdictional areas inside the city limits. Three states the percentage required to approve the creation of a county jurisdictional area would be a majority of the returned ballots. Four would add an exemption for existing county wide jurisdictional areas.

CHAIRMAN MILLER reminded the committee that there was more clean up language to be added. The bill would allow the county commissioners to designate the jurisdictional area and then they would take the building code enforcement plan to the people for a vote. That is on page 3, Section 4 after the creation of a county jurisdictional area.

Mr. Niss commented that is a very important provision. That needs to be very clear whether the intent is to vote on the geographical map, the ordinance, or both.

SEN. TOOLE was very concerned with the bill. He was confused and felt the bill was not good as it stood.

Substitute Motion/Vote: SEN. TOOLE MOVED HIS AMENDMENT BE ADOPTED. Motion failed 2-4 with Senators Miller and O'Neil and Representatives Haines and Bookout-Reinicke voting no.

REP. TROPILA expressed his dissatisfaction with the bill.

SEN. TOOLE expressed his dissatisfaction with the bill.

CHAIRMAN MILLER asked, if the hearing process before it goes to the voters, was still in the bill. **Mr. Niss** said the provision is in Section 3. The amendments leave fairly intact existing section 3 of the bill which requires both a hearing and an objection procedure and continues with an objection procedure on top of page 5.

CHAIRMAN MILLER felt that provision addressed some of **SEN. TOOLE'S** and **REP. TROPILA'S** concerns to allow the public to decide

what the plan would be. There would be a hearing and the proposal would be known beforehand.

Mr. Niss brought to their attention one more time the language to what the vote is on. Is it the map, the ordinance or the map and the ordinance. That result is required on the bottom of page 3, Section 5, subsection 1. After the approval of the proposed program by the Dept., the board of county commissioners shall submit the question of whether to adopt the code enforcement program within the county jurisdictional area to the record owners.

CHAIRMAN MILLER felt that the county commissioners should decide what the area is and what would go to the vote of the people is not the map, but the proposal of the code enforcement and how it would be enforced.

Mr. Niss will strike "within the county jurisdictional area" or leave it in and say "as determined by the county commissioners." What is submitted to the voters would only be the ordinance and not the map. If the property owners are dissatisfied with the geographic limitation, their remedy would be the ballot box.

This was added to the motion made by **REP. BOOKOUT-REINICKE**.

Vote: The motion carried with SEN. TOOLE and REP. TROPILA voting no.

ADJOURNMENT

Adjournment: 9:15 A.M.

SEN. KEN MILLER, Chairman

MARY GAY WELLS, Secretary

KM/MGW

EXHIBIT (frs87sb0242aad)